IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

AS.No. 217 of 2000(D)

OS.1028/1992 of I ADDL.SUB COURT,ERNAKULAM
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APPELLANT:

NARAYANAN,S/O.LATE KUNJU, RESIDING AT
VATTAPARAMBIL HOUSE, KUREEKADU VILLAGE,
KANAYANNUR TALUK, P.O.CHOTTANIKKARA.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

RESPONDENTS:
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1. SARADA, D/O.LATE KUNJU AND W/O.PADMANABHAN,
RESIDING AT KUNNAKURUDI, KUNNATHUNADU TALUK.

2. KAMALAM, D/O. -DO- & W/O.NARAYANAN,
RESIDING AT PERUMBILLIKUDI, KEEZHILLAM, PERUMBAVOOR.

3. KUNJI, D/O. -DO- & W/O.KUNJAN, RESIDING AT
PARANPANCHERRY HOUSE, NEAR KALAMPUR,
MUVATTUPUZHA.

4. THANKAPPAN, S/O.LATE KRISHNAN, RESIDING AT
KADUNGAMANGALAM, KUREEKADU VILLAGE,
KANAYANNUR TALUK.

5. THANKAMANI, D/O. -DO- & W/O.RAVI, KAKKANADU.

6. NEELAKANDAN, RESIDING AT KOTHARIPARAMBIL HOUSE,
THIRUVAMKULAM VILLAGE, KANAYANNUR TALUK.

7. NARAYANAN, S/O.LATE KUNJU, PERUMPILLIKUDI,
RESIDING AT PERUMBILLIKUDI, KEEZHILLAM, PERUMBAVOOR.

8. BHARATHI ALIAS MARUTHI, W/O.THANKAPPAN, RESIDING AT
KADUNGAMANGALAM, KUREEKADU VILLAGE, KANAYANNUR TALUK.

9. RAVI, S/O.VELAYUDHAN, RESIDING AT PERUMBILLIKUDI,
KUREEKADU VILLAGE, KANAYANNUR TALUK.

10. RAJAN, S/O. NEELAKANDAN, RESIDING AT KOTHARIPARAMBIL, KADUNGAMANGALAM, THIRUVANKULAM VILLAGE, KANAYANNUR TALUK.

11. CHANDRAN, S/O.NEELAKANTAN, -DO -DO-

12. SINDHU, D/O.NEELAKANTAN, RESIDING AT KOTHARIPARAMBIL, KADUNGAMANGALAM, THIRUVANKULAM VILLAGE, KANAYANNUR TALUK.

13. BALAN, SON-IN-LAW OF NEELAKANTAN, -DO- -DO-

BY ADV. SRI.C.K.ARAVINDAKSHA MENON
SRI.K.C.CHARLES
SRI.A.BALAGOPALAN
SRI.K.C.CHARLES

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN,J.

A.S.NO.217 OF 2000

Dated this the 6th day of February, 2007

JUDGMENT

This is an appeal against the judgment and decree in O.S.No.1028/92 on the file of the Ist Additional Sub Court, Ernakulam. Plaintiff is the appellant herein. Suit was one for declaration of title, recovery of possession, compensation and prohibitory injunction. Plaintiff's contention in brief was that his father, Kunju gave plaint A schedule property to him as per settlement deed executed in his favour sometimes in 1125 ME. As per the settlement deed his life estate was reserved in favour of his mother and after her death he became the absolute owner of the property. Though he has produced certified copy of the settlement deed, did not produce the original.

There was a contention by the respondents that the settlement deed itself cannot be acted upon as it is not genuine. The court below found that in the absence of any original document produced, no reliance can be placed on the certified copy, especially, in the wake of dispute raised by the defendants regarding the genuineness of the document. But in order to prove genuineness of the document, the plaintiff produced certain documents along with I.A.No.3268/99 and another I.A.No.3267/99 was also filed to reopen the evidence. But the court below rejected these I.As. on the ground that the evidence was closed four years prior to the filing of these I.As. and I.A.No.3267/99 being to summon the defendants cannot be allowed. The order in I.A.No.3267/99 cannot be said to be wrong because the attempt

of the appellant was to examine the defendants. However, the mere fact that the documents were produced after four years of the closing of the evidence, if it denies an opportunity to put forth the evidence in the possession of the appellant, the delay by itself shall not be a reason for non-consideration of these documents resulting in denial of justice. One of the documents produced is a settlement deed executed by the mother along with the appellant in favour of one Velayudhan. It is his contention that subsequently Velayudhan has sold the property to one of the defendants. According to the appellant, the recitals contained in the deed executed in favour of Velayudhan would prove that settlement deed relied on by the appellant is a genuine document. Anyway, these

contentions cannot be considered at this stage of these proceedings especially when these documents were not allowed to be produced and marked in this case.

2. The learned counsel for the respondents submits that merely because Velayudhan himself traced his title to a document executed by the plaintiff which in turn is based on the settlement deed, as such cannot bind the other co-owners. He also placed reliance on the Full Bench decision reported in **Chandi Avira v. Thomman Varkey and others (AIR (38) 1951 Travancore-Cochin 109)** to support his contention. Of course this contention will also be evaluated before any reliance is placed on the document so produced by the plaintiff. But all these contentions cannot now be gone into when the very document

produced has not been allowed to be marked in this case. The court below has found in the absence of producing the original of the settlement deed by the plaintiff, no further question arises and therefore the suit was dismissed. Since the question centres round as to whether settlement deed was executed by the father and whether the appellant has got any title thereunder is a matter to be considered on the evidence to be adduced in this case. Therefore, I think it is only appropriate that an opportunity should be given to the appellant to produce those documents and to mark the same by re-examining the plaintiff/appellant itself. Contra evidence, if any, may also be adduced by the defendants. Thereafter, the matter shall be re-considered and disposed of in accordance with law.

3. For the limited purpose of enabling the appellant to produce those documents and to consider the same by the court below as directed above, this appeal is allowed by way of remand.

The parties shall appear before the court below on 07/03/2007.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

A.S.NO.217 OF 2000

JUDGMENT

6th February, 2007